

**FILED**

APR 27 2022

CARMELITA REEDER SHINN, CLERK  
U.S. DIST. COURT, WESTERN DIST. OKLA.  
BY Ka, DEPUTY

In the United States District Court For  
The Western District Of Oklahoma

Jimmie D. Wilkins  
Petitioner

CIV-22-8-J  
Case #

Scott Crow  
Respondent

Amanda Maxfield Green  
Judge

### Motion

For State Courts Violation of Brady v. Maryland, 373 U.S. 83 (1963);  
State's Failure to Disclose Lack of Legal License, Of Judge, Prosecutor, Defense  
Attorneys, For Indian Country Jurisdiction; and "ANY" Jurisdiction in U.S. For  
Due Process; 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Amendments; Rule 59(e), Actual Innocence Gateway Exception  
Any Federal, State, Municiple, or Tribal Jurisdiction "MUST," (1<sup>st</sup>) provide  
to the defendant the right to "Effective" assistance of counsel at "least  
Equal" to that guaranteed by the United States Constitution; (2<sup>nd</sup>) At  
the expense of the government claiming Jurisdiction, provide an indigent  
defendant the assistance of a defense Attorney "Licensed" to Practice Law  
by "ANY" Jurisdiction in the "United States," that applies appropriate  
professional Licensing standards and effectively ensures the

(page 1)

(next)

{Competence} and professional responsibility of its {licensed attorneys};

(3<sup>rd</sup>) {Require that the Judge} presiding over the criminal proceeding;

(A) Has sufficient legal training to preside over criminal proceedings;

(B) Is {Licensed} to practice law by {ANY} Jurisdiction in the

United States; see Term Jurisdiction Loci; see also U.S. Const. Art. III.

As the United States Tenth Circuit of Appeals, has held in United States

V. Sands, 899 F.2d 912 (10<sup>th</sup> Cir. 1990); see Murphy V. Royale, 875 F.3d 896,

907-909, 966 (2017); see also State V. Klindt, 782 P.2d 401, 404 (Okla. Crim. App. 1989),

(Overruling Ex parte Nawahhi, 60 Okla. Crim. III, 61 P.2d 1139 (1936); also United

States V. Sands, 968 F.2d 1058, 1062-1063 (CA10 1992), (Oklahoma Lacked

Jurisdiction over crimes by or against Indians), therefore Why did

Oklahoma historically think it could try Native Americans for {any} crime

committed on restricted allotments or {anywhere} else? see McLoist V. Oklahoma,

591, U.S. S.Ct. (2020), In Klindt Oklahoma state courts

(page 2)

(next)

"Erroneously" entertained prosecutions for major crimes by Indians  
 on Indian Allotments for decades, until states "allegedly" finally  
 disavowed the practice in 1989. So whether a crime was committed  
 on a restricted allotment, a reservation, or land that wasn't Indian  
 country at all, to Oklahoma it just didn't matter. By Oklahoma's  
 own admission, for decades Oklahoma's historical practices, didn't even try  
 to conform to the Law, of the Major Crimes Act, of which makes the  
 states past prosecution's "erroneous", and a meaningless guide for Federal  
 Law of 18 U.S.C. §1151, Indian Country, by Oklahoma's having overstepped  
 its authority in Indian Country, "Maliciously", entertaining "Sham-Competency"  
 and guardianship proceedings that divested Tribal Members, of oil rich  
 allotments, by the Federal Officials charged with implementing the Laws,  
 rather than ignoring the written Law; see also Rice v. Olson, 324 U.S.  
 786, 789 (1945), (Chief Justice Marshall, held that Indian Tribes were  
 (page 3) (next)

{Distinct-Political-Communities} having territorial boundaries, within which their authority is Exclusive). As the United States Supreme Court has held that, the State of Oklahoma has been "Maliciously Entertaining" {Sham Competency} explains to the Indian Petitioner that, Oklahoma's Judges and Attorney's do not have a license, to practice law, by the Indian Nations, in the Indian Nation Reservation therefore providing {Ineffective Assistance Of Counsel}, and by the Judges that presided over the Petitioner's trial, and arraignment, and preliminary, and sentencing, were not Licensed within the Tribal Nation Reservation's, to preside. Therefore committing {Sham-Competency} by "NOT" being Licensed to practice within {ANY} Jurisdiction, in the United States. Thus creating {Actual-Innocence} for Federal Habeas Court, to excuse state procedural bar to Ineffective Assistance claims, and exhaustion of State remedies, and AEDPA's time limitations.

(10<sup>th</sup> Cir. Ct. App.), Tymkovich, Chief Judge, held that;

(1<sup>st</sup>) habeas court's actual innocence inquiry, as basis for excusing procedural default of ineffective assistance claim, extended beyond a prisoner's guilt as a principal, and encompassed his guilt as an accomplice, and

(2<sup>nd</sup>) prisoner did not demonstrate actual innocence with respect to accomplice liability.

Footnote; Actual innocence can (1<sup>st</sup>) be invoked to overcome the AEDPA limitations;

(2<sup>nd</sup>) it can be invoked to overcome other procedural bars to a claim;

(6<sup>th</sup>) Ft. NT. (3<sup>rd</sup>) the Supreme Court has not foreclosed the possibility that actual innocence could be invoked as the substantive constitutional claim for habeas relief.

(7<sup>th</sup>) Ft. NT. To qualify for the gateway actual innocence exception to procedural default of a federal habeas claim, a state prisoner need not <sup>"</sup>conclusively demonstrate his innocence;

rather, the prisoner must show that "it is more likely than not that no reasonable

Juror would have convicted him in the light of new evidence, or, to remove the

double negative, that more likely than not any reasonable juror would have reasonable doubt.

There are three components of true "Brady" violations, (1<sup>st</sup>) Evidence at issue must be favorable to accused, either because it is exculpatory, or because it is impeaching; The State has proven that it did "NOT" have a license to practice Law in "ANY" Jurisdiction of the United States, because it was not Licensed to practice by or in the Indian Reservation, and this information would have been "Exculpatory" evidence, for the favorability of the accused to obtain a Fair Trial, of the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments, (2<sup>nd</sup>) That evidence must be, or have been, suppressed by the State, either willfully or inadvertently; such as the states having suppressed the evidence that the state Judges and Prosecutors, and defense Attorney's, were not Licensed to practice Law, or render decisions that turned out to be Contrary To Clearly Established United States Supreme Court Precedence, (3<sup>rd</sup>) This would have Prejudiced the Petitioner from a Fair Trial therefore Prejudice must have ensued.

As Brady requires state to disclose material exculpatory and impeachment evidence, regardless of whether Motion compelling such disclosure is filed or granted.

To guide the prediction by a federal habeas court, in a habeas proceeding initiated by a state prisoner, of how the state's highest court would decide an issue of state law, the habeas court may consult persuasive state authority, such as dictum by the state's highest court and precedential decisions by a state's intermediate appellate courts. Petitioner has established that a Miscarriage of Justice has occurred, if this Federal Habeas Court does not review this claim.

see *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013), (As Petitioner has unequivocally proven a miscarriage of Justice. And as *United States v. Michael McGaughy*, 670 F.3d 1149 (10<sup>th</sup> Cir. 2012) (Subject Matter Jurisdiction cannot be conferred as waived by consent, estoppel, or failure to challenge jurisdiction early in proceedings.



The practice of Law by a person, who has <sup>"</sup>not been Licensed<sup>"</sup> or admitted  
to practice Law in a given <sup>"</sup>Jurisdiction<sup>"</sup>

(Attorney's certificate) (18c) A certificate issued by a court to a duly qualified  
lawyer permitting him, or him or her to practice in that court or in <sup>"</sup>all<sup>"</sup>  
the courts of that court's <sup>"</sup>Jurisdiction<sup>"</sup>,

Tribal Court: (1978) Under the Indian Child Welfare Act, a court that has  
child-custody Jurisdiction and that is (1) a Court of Indian Offenses, (2) a  
court establishes and operated under an Indian Tribe's code or custom, or  
(3) <sup>"</sup>ANY<sup>"</sup> other tribal administrative body that is vested with authority

over child-custody proceedings. The <sup>"</sup>Tribal Court<sup>"</sup> is composed of <sup>"</sup>Tribal  
Members<sup>"</sup> is usually situated on the <sup>"</sup>Reservation<sup>"</sup>, and varies in its  
characteristics from Tribe to Tribe. It is <sup>"</sup>NOT<sup>"</sup> part of <sup>"</sup>ANY<sup>"</sup> state's  
Judicial system, instead operating more or less as a Judicial system of a  
foreign nation, or being in Violation of "Brady" doctrine.



Fisher V. Texas, 169 F.3d 295 (5<sup>th</sup> Cir. 1999), (Futility {Exception} To exhaust state question, applies when highest state court, has recently decided same or similar legal question, adversely to petitioner); see also 25 U.S.C.A. § 1302 (c) Rights of defendants; (Federal, State, Tribal, and Munciple (1) "MUST" provide to the defendant the {Right to Effective Assistance Of Counsel} at "least Equal" to that guaranteed by the United States Constitution; and (2) At the expense of the "Government," provide an indigent defendant, the {Assistance Of A Deffense Attorney "Licensed" To "Practice Law" by "ANY" "Jurisdiction" in the "United States" } that applies appropriate professional Licensing standards and effectively ensures the {Competence} and professional responsibility of its Licensed Attorneys.

(3) The Government "MUST" Require that the Presiding Judge over the criminal proceeding (A) has sufficient Legal training to preside over criminal proceedings; and (B) The Government "MUST" Require that the Judges,

Prosecutors, Defense Attorneys, And Arresting Officers, "MUST" be Licensed to practice law by ANY Jurisdiction in the United States; see also *Wackerly v. State*, OKCR 237 P.3d 795, (2010); see also *Wackerly v. Workman*, 580 F.3d 1171 (10<sup>th</sup> Cir. 2009), (Any Habeas Petitioner presenting ineffective assistance of counsel claims has the burden of establishing two things to prevail; (1<sup>st</sup>) he must show that counsel committed serious errors in light of prevailing professional norms, (such as the proof of an existing Professional License to Practice Law in ANY Jurisdiction in the United States), such that his Legal representation fell below an objective standard of reasonableness, (i.e. Attorneys false representation of being Licensed to practice Law in the "Jurisdiction" of the "Indian Country" proscribed by Title 18 U.S.C § 1152 or 1153). (2<sup>nd</sup>), The Petitioner "MUST" show that this deficient performance mattered, (i.e. The Attorneys inability to use the Laws of the Indian Nation Reservation to prevail), Namely, that there is a reasonable probability that, but for counsel's Unprofessional

"errors", the results of the proceeding would have been different; see U.S.C.A. Const. Amend. 6; see also *Early v. Packer*, 537 U.S. 3, 8, 123 S.Ct. 362, 154 L.Ed.2d 263 (2002) (per curiam) (Indeed, AEDPA "does not even require [state court] awareness of [supreme Court] cases, so long as neither the reasoning nor the result of the state-court decision contradicts them"). Thus The OCCA did "NOT" evaluate the historical context of "ANY" Laws, (i.e. The Treaties of the Indian Nations} for, the Indian Nations Right to require that, Attorneys requesting to Practice Law within the Indian Nation Reservation, obtain a License From the Nation, and pay a yearly fee to practice in the Nations Reservation). There The OCCA's decision failed To apply the required legal standard to the facts; see *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). (As the (second) prong is that, defendant must show that the deficient performance prejudiced the defense by showing that counsel's errors were so serious as to deprive defendant of a fair trial,

"{A Trial whose result is reliable or competent}"; see U.S.C.A. Const. Amend. 6; also 18 U.S.C.A. § 3599(f); also 28 U.S.C.A. §§ 1254, 1291, 1253, 1254; see also *Burt v. Titlow*, 571 U.S. ---, ---, 134 S.Ct. 10, 12, 187 L.Ed.2d 348 (2013), (Defendant must present evidence of what his counsel did or did NOT do), (i.e. The Judge, the Prosecutor, The Police or Officers of the court, and the Defense Attorney, did NOT have a License to Practice within the Reservation or Former Reservation Oklahoma has NOT obtained Tribal Consent... and thus has never acquired Jurisdiction over Indian Country; see *Cravatt*, 825 P.2d at 279; see also *Navajo Tribe*, 809 F.2d at 1475, (Adjudicating... "Indian Law"), as Indian Law is the issue in question, we must turn to the U.S. S.Ct. dicta for the Indian Jurisdiction Law over Laws for Indian Nations and Reservation Laws; see *Felix Cohens*, *Federal Handbook On Indian Law*, for Tribes Rights to affix Tribal Licensing for Attorneys within Tribal Jurisdiction, for Tribal as well as The U.S. Const. Amend. does hold that the Attorneys, Judges, Prosecutors, and

Officers of the Court, "{MUST}" be "{Competent}" to Function at the Job at which they are attempting to fulfil, under Tribal Regulations. see 1895 report from the Dawes Commission to Congress, which stated that, "The so-called governments" in the Indian Territories were "Wholly-Corrupt, Irresponsible, and Unworthy to be longer trusted," with the lives and property of Indian citizens; Dept of the Interior, H.R. Doc. No. 54-55, at XCV (1<sup>st</sup> Sess. 1895), and as The Commission have not come here to interfere at all with the administration of public affairs in these "{Nations}" or to undertake to deprive any of your people of their just Rights; (i.e. 9<sup>th</sup> Amend. U.S. Const.), H.R. Doc. No. 54-5, at LXXX "{Tribal Laws}" requiring a permit to reside or carry on business in the Indian Country" were still in effect; see W.L. 1001 at 1900, also 23 U.S. Op. Att'y. Gen. 214, 215 (1900) and at 215-18. Also at 219, "Simply Intruders" who "should be removed, unless they obtain such permit and pay the required tax, or permit, or "{License-Fee}" Id. at 219, and 220; see also Maxey v. Wright, 54 S.W. 807,

809-10, ~~812~~ (Indian Terr.) (Upholding Creek occupancy Tax imposed on non-

Member <sup>"</sup>Lawyers<sup>"</sup> practicing Law within the Creek Nation) <sup>aff'd</sup>, 105

F.1003 (8<sup>th</sup> Cir. 1900).

<sup>"</sup>18 U.S.C.A. § 249, Hate Crimes Act, 3/29/2022<sup>"</sup>

(a)(i) Offenses involving actual or Perceived-Race, color, religion, or National Origin, Whe-

ever, whether or not acting under color of Law, willfully causes bodily injury to

"ANY" person or, through the use of, fire, a firearm, a dangerous weapon, or

an explosive, or incendiary device, (i.e. the firearm brandished by the Officer

during the false-arrest by the Unlicensed-Officer, attempts to cause bodily injury

to any person, because of the actual or Perceived-Race, color, religion, or National

Origin of "ANY" Person (B)(i) shall-be-imprisoned, for any term of years, or for

Life, fined in accordance with this title, or both, if death results from the offense,

or (ii) the offense includes Kidnapping, or an attempt to Kidnap, aggravated

sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to Kill

(IV)(ii) or otherwise affects interstate or foreign-commerce, (ie. Art I sect. 8 Indians).

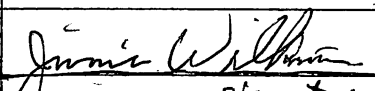
"{25 U.S.C.A. §§ 4101-4243, 79 A.L.R. Fed 2d. 285}"

(Statutes relating to Indians are to be given a liberal construction in "Favor" of the "Indians", interpreting laws and Treaties in light most "Favorable" to "Indians". Doubtful expressions are to be resolved in "Favor" of the interests of a people who are wards of the "Nation" and dependent wholly on its protection and good faith)

"{41 Am. Jur. 2d Indians; Native Americans § 2}"

(If a person's natural Mother is Indian, the person must be considered Indian even though the Father is not Indian. Evidence of a parent, grandparent, or great-grandparent who is clearly identified as Indian is generally sufficient to satisfy the "Indian Blood" prong of the Test for Indian Status.

I Jimmie D. Wilkins do hereby declare, under penalty of perjury, all the information in this Motion is True and Correct to the best of My Knowledge.

  
signature

4/25/2022  
Date